

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on February 5, 2001 at 8:00 A.M., in Room 137 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. Darrel Adams (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Jeff Mangan (D)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. Ken Peterson (R)  
Rep. Diane Rice (R)  
Rep. Bill Thomas (R)  
Rep. Merlin Wolery (R)  
Rep. Cindy Younkin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Mary Lou Schmitz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: **HB 424 - 1-30-01**  
**HB 390 - 1-31-01**  
**HB 27 - 1-31-01**

Executive Action: **HB 27 - DP**  
**HB 201 - DPAA**  
**HB 213 - DPAA**

**HEARING ON HB 424**

**Sponsor: Rep. Ken Peterson, HD 20, Billings** said this Bill is designed to impose upon health care organizations the standard of ordinary care and any health care decisions that they make. Ordinary care, as defined on Page 2 of the Bill, means the degree of care that an ordinarily prudent health carrier or managed care entity would exercise under the same or similar circumstances. There is a new section which defines standard of care requirements for action for damages. It means there are certain steps to go through before you have a right to go to court to challenge the health care organization on the basis of their decision with respect to health care. It only applies to health care organizations if they make health care decisions.

This law was patterned after a law that was adopted in Texas and the Texas law was challenged in the federal court system in the 5<sup>th</sup> circuit. It was upheld. The experience, with respect to lawsuits, has been only three lawsuits which have arisen out of this law.

**Proponents: Jerry Loendorf, Montana Medical Association,**  
**EXHIBIT (juh29a01)**

**Dr. Jack McMahan, Retired Surgeon, Helena, MMA**

**Steven Artell, Executive Director, Montana Right to Life, Helena**

**Al Smith, Montana Trial Lawyers Association, Helena,**  
**EXHIBIT (juh29a02)**

**Dr. Donald Harr, MMA-MPA, Billings**

**Darrell Holzer, AFL-CIO, Helena**

**Clyde Dailey, AARP, Helena**

**Sami Butler, Montana Nurses' Association**

**Mary McCue, Executive Director, Montana Dental Association.**

Opponents: Dr. Steven Akre, Chairman, Great Falls Clinic

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Tanya Ask, Blue Cross/Blue Shield of Montana  
**EXHIBIT**(juh29a03)

Dr. Thomas Thigpen, Billings, Medical Director,  
Yellowstone Community Health Plan.

Tom Ebzery, Attorney, Health Dynamics, Inc.  
Billings.

Page Ringman, Health Insurance Association of  
America.

Aidan Myhre, Montana Chamber of Commerce, Helena  
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Don Allen, Montana Benefits and Life

Riley Johnson, National Federation of Independent  
Businesses.

Joyce Brown, Department of Administration,  
**EXHIBIT**(juh29a04)

Questions from Committee Members and Responses: Reps. Thomas,  
Noennig, Hurdle, Gutsche, Mangan, Harris, Newman, Shockley to Dr.  
McMahan, Mr. Ebzery, Mr. Smith, Ms. Ask, Ms. Ringman.

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Closing by Sponsor: Rep. Peterson closed the Hearing on HB 424 by  
saying all this law does is establish a standard to which  
everyone should be accountable, the standard of ordinary care.

#### HEARING ON HB 390

Sponsor: Rep. Jim Shockley, HD 61, Ravalli County said this Bill  
protects the victim of a crime from liability when he hurts a  
felon if his use of force was reasonable. Reasonable force is  
defined in the statute.

Proponents: Gary Marbut, Montana Shooting Sports Association, and Western Montana Fish and Game Association, National Rifle Association, Missoula. **EXHIBIT**(juh29a05) **EXHIBIT**(juh29a06) **EXHIBIT**(juh29a07)

Rep. Gilda Clancy, HD 51, Montana Women Shooting Association, Helena.

Alfred M. Elwell, Self, Clancy

Brendon Elwell, Self

Opponents: Al Smith, Montana Trial Lawyers Association, **EXHIBIT**(juh29a08)

Questions from Committee Members and Responses: Reps. Curtiss, Peterson to Mr. Marbut, Mr. Smith,

Closing by Sponsor: Rep. Shockley closed the Hearing on HB 390.

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EXECUTIVE ACTION ON HB 201

Motion: REP. YOUNKIN moved that HB 201 DO PASS. #1

Motion: REP. YOUNKIN moved that HB 201 BE AMENDED to replace line 13 through 16 on page 2, language "a person commits the offense of theft by embezzlement when" etc. #2

Discussion: Reps. Younkin, Noennig, Newman, Laszloffy, Mr. MacMaster, Peterson, Clark, Shockley.

Motion/Vote: REP. NEWMAN moved a substitute motion that HB 201 BE AMENDED. #3 Motion carried unanimously 19-0.

Motion: REP. YOUNKIN moved that HB 201 DO PASS AS AMENDED. #4

Discussion: Reps. Rice, Mr. MacMaster, Peterson, Mangan, Hurdle, Laszloffy, Younkin, Noennig, Shockley, Clark.

Motion: REP. NOENNIG moved that HB 201 BE AMENDED. #5

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**Vote:** Amendment #5 carried 16-3 with Reps. Holden, Rice and Younkin voting no.

**Discussion:** Reps. Clark, Shockley, Younkin, Newman, Mangan, Hurdle.

**Motion/Vote:** REP. NEWMAN moved that HB 201 DO PASS AS AMENDED. #6 Motion carried 13-7 with Reps. Shockley, Laszloffy, Clancy, Gutsche, Harris, Holden, and Hurdle voting no.

**EXECUTIVE ACTION ON HB 27**

Rep. Shockley announced, even though this Committee hasn't had a Hearing on HB 27, it has been on the floor and been sent down here for Executive Action.

**Discussion:** Reps. Laszloffy, Newman, Hurdle, Noennig, Mangan, Younkin, without objection Rep. Musgrove, Sponsor.

**Motion:** REP. NEWMAN moved that HB 27 BE AMENDED. #7 Motion withdrawn.

**Motion:** REP. LASZLOFFY moved a substitute amendment that HB 27 BE AMENDED. #8 Motion withdrawn.

**Discussion:** Reps. Laszloffy, Newman, Peterson, Noennig, Hurdle, Mangan, Wolery, Clark without objection, Rep. Musgrove, Sponsor.

Rep. Adams made a comment that he wasn't comfortable with the whole thing. He visualizes the law-abiding kids getting off the streets and roads and what do you have left?

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**Motion/Vote:** REP. NOENNIG moved that HB 27 DO PASS. Motion carried 14-6 with Reps. Shockley, Adams, Gutsche, Harris, Hurdle and Rice voting no.

**EXECUTIVE ACTION ON HB 171**

**Motion:** REP. EGGERS moved that HB 171 DO PASS. #10

**Discussion:** Rep. Newman, Mr. MacMaster.

**Motion/Vote:** REP. CLARK moved that HB 171 BE POSTPONED for one day. #11. Motion carried 17-1 with Rep. Shockley voting no.

EXECUTIVE ACTION ON HB 213

Motion: REP. NEWMAN moved that HB 213 DO PASS. #12

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Motion: REP. SHOCKLEY moved that HB 213 BE AMENDED, amendments #11 and #13. EXHIBIT(juh29a09) #13

Discussion: Reps. Shockley, Harris, Clark, Newman, Peterson, Curtiss.

Vote: Motion #13 failed on a tie vote 10-10.

Motion: REP. SHOCKLEY moved that HB 213 BE AMENDED, amendment #3. #14

Discussion: Reps. Newman, Peterson, Laszloffy. Gutsche, Shockley.

Vote: Motion #14 carried 15-5 with Reps. Gutsche, Hurdle, Mangan, Peterson and Younkin voting no.

Motion: REP. SHOCKLEY moved that HB 213 BE AMENDED. #15

Discussion: Reps. Newman, Shockley, Peterson, Noennig.

Motion: REP. NEWMAN moved a substitute motion that HB 213 BE AMENDED. #16

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Vote: Motion #16 carried unanimously 20-0.

Motion: REP. SHOCKLEY moved that HB 213 BE AMENDED, amendment #6 #17.

Discussion: Reps. Shockley, Newman.

Vote: Motion #17 failed 7-13 with Reps. Clark, Clancy, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan, Newman, Noennig, Peterson, Wolery and Younkin voting no.

Motion: REP. SHOCKLEY moved a substitute motion that HB 213 BE AMENDED, amendment 7,8,9 of EXHIBIT 8. #18

**Discussion:** Reps. Shockley, Peterson, Newman, Noennig, Mr. MacMaster.

**Vote:** Motion #18 failed 6-14 with Reps. Clark, Clancy, Eggers, Gallus, Gutsche, Harris, Holden, Hurdle, Mangan, Newman, Noennig, Peterson, Wolery and Younkin voting no.

**Motion:** REP. NEWMAN moved that HB 213 BE AMENDED, amendment 21301. #19

**Discussion:** Reps. Noennig, Newman, Shockley, Mr. MacMaster, Clark.

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**Vote:** Motion #19 carried unanimously 20-0.

**Motion:** REP. MANGAN moved that HB 213 DO PASS AS AMENDED. #20

**Motion:** REP. MANGAN moved that HB 213 BE AMENDED. #21 Rep. Mangan withdrew his amendment.

**Motion:** REP. CLARK moved a substitute motion that HB 213 BE AMENDED. #22. Withdrawn

**Discussion:** Reps. Shockley, Newman, Peterson

**Motion/Vote:** REP. MANGAN moved that HB 213 DO PASS AS AMENDED. #23. Motion carried 14-6 with Reps. Shockley, Adams, Curtiss, Holden, Rice and Thomas voting no.

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**ADJOURNMENT**

Adjournment: 12:45 P.M.

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REP. JIM SHOCKLEY, Chairman

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MARY LOU SCHMITZ, Secretary

JS/MS

**EXHIBIT** (juh29aad)